



UNITED STATES ENVIRONMENTAL PROTECTION AGENCY
REGION 8

999 18TH STREET- SUITE 200

DENVER, CO 80202-2466

Phone 800-227-8917

<http://www.epa.gov/region08>

Ref: 8ENF-UFO

JUN 14 2006

CERTIFIED MAIL 7005-0390-0000-4846-5964

RETURN RECEIPT REQUESTED

Don R. Lee, Registered Agent
K2 America Corp.
158 Main Street
P.O. Box 790
Shelby, Montana 59474

Re: UNDERGROUND INJECTION
CONTROL PROGRAM (UIC)
Proposed Order and Penalty Complaint
with Notice of Opportunity for Hearing

Dear Mr. Lee:

The enclosed document is a Proposed Order and Penalty Complaint with Notice of Opportunity for Hearing ("complaint") for violations of the Safe Drinking Water Act ("SDWA"). Please carefully read the complaint soon, since it describes K2 America Corp.'s ("K2's") rights and responsibilities in this matter as well as EPA's authority, the factual basis of the violations, and the background for the proposed penalties. EPA is enclosing a copy of the Rules of Practice that govern these proceedings, an information sheet about the Small Business Regulatory Enforcement Fairness Act, and a required Public Notice associated with this complaint.

K2 is required to take action within 30 calendar days of your receipt of this complaint to avoid the possibility of having a default judgment entered against K2 that could impose the penalty amount proposed in the complaint.

Whether or not K2 requests a hearing, we encourage an informal conference with EPA concerning the alleged violations in an effort to negotiate a settlement. K2 may wish to appear at an informal conference and/or be represented by legal counsel. To arrange for such a conference, K2 should contact Jim Eppers, Enforcement Attorney, Legal Enforcement Program, at the number provided below. Request for such a conference does not extend the 30 calendar day period during which a request for hearing must be submitted. Public Notice of EPA's complaint and the opportunity to provide written comments on the complaint is being provided pursuant to section 1423 (c)(3)(B) of the SDWA, 42 U.S.C. § 300h-2(c)(3)(B). Should a hearing be held, any person who comments on the complaint has a right to participate in the hearing.

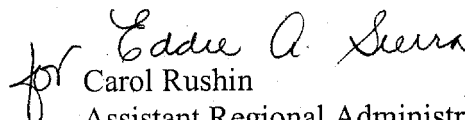
If K2 has technical questions relating to this matter, the person most knowledgeable on my staff is Nathan Wiser, UIC Enforcement Team, Technical Enforcement Program, at 1-800-227-8917 ext. 6211 or (303) 312-6211. For all legal questions, the person most knowledgeable on my staff is Jim Eppers at 1-800-227-8917 ext. 6893 or (303) 312-6893. Mr. Wiser and Mr. Eppers can also be reached at the following addresses:

Nathan Wiser (Mail Code 8ENF-UFO)
U.S. EPA Region 8
999 18th Street, Suite 200
Denver, Colorado 80202-2466, or

Jim Eppers (Mail Code 8ENF-L)
Enforcement Attorney
U.S. EPA Region 8
999 18th Street, Suite 200
Denver, Colorado 80202-2466.

We urge K2's prompt attention to this matter.

Sincerely,


for Carol Rushin
Assistant Regional Administrator
Office of Enforcement, Compliance
and Environmental Justice

Enclosures:

Proposed Order and Penalty Complaint
with Notice of Opportunity for Hearing
Public Notice
Small Business Regulatory Enforcement Fairness Act fact sheet
40 CFR Part 22 Rules of Practice

cc: Gerald Wagner, Director of Environmental Program (with all enclosures)
Blackfeet Indian Tribe
P.O. Box 2029
Browning, Montana 59417

1 UNITED STATES
2 ENVIRONMENTAL PROTECTION AGENCY
3 REGION 8
4 Docket No. SDWA-08-2006-0044

2006 JUN 14 AM 9:04

FILED
EPA REGION VIII
HEARING CLERK

5
6 In the Matter of:)

7)
8 K2 America Corp.)

9 A Montana Corporation,)
10 Respondent.)

**PROPOSED ORDER AND PENALTY
COMPLAINT WITH NOTICE OF
OPPORTUNITY FOR HEARING
(COMPLAINT)**

11)
12 Proceedings under Section 1423(c))
13 of the Safe Drinking Water Act)
14 42 U.S.C. 300h-2(c))

15
16 **INTRODUCTION**

- 17
18 1. This civil administrative enforcement action is authorized by Congress in section
19 1423(c) of the Public Health Service Act, also known as the Safe Drinking Water
20 Act (SDWA or the Act). 42 § U.S.C. 300h-2(c). The Environmental Protection
21 Agency (EPA) regulations authorized by the statute are set out in part 144 of title
22 40 of the Code of Federal Regulations (40 C.F.R.), and violations of the statute,
23 permits or EPA regulations constitute violations of the Act. The rules for this
24 proceeding are the "Consolidated Rules of Practice Governing the Administrative
25 Assessment of Civil Penalties, Issuance of Compliance or Corrective Action
26 Orders and the Revocation, Termination or Suspension of Permits ("Rules of
27 Practice"), 40 C.F.R. part 22, a copy of which is enclosed.
28
29 2. The undersigned EPA official has been properly delegated the authority to issue
30 this Proposed Order and Penalty Complaint with Notice of Opportunity for
31 Hearing (complaint).
32
33 3. EPA alleges that K2 America Corp. (Respondent) has violated the Act and
34 proposes the assessment of a civil penalty, as more fully explained below.
35

36 **NOTICE OF OPPORTUNITY FOR A HEARING**

- 37
38 4. Respondent has the right to a public hearing before an administrative law judge to
39 disagree with any factual allegation made by EPA in the complaint or the
40 appropriateness of the proposed penalty, or to present the grounds for any legal
41 defense it may have.
42
43 5. To disagree with the complaint and assert your right to a hearing, Respondent
44 must file a written answer (and one copy) with the Region 8 Hearing Clerk at the
45 following address:
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Region 8 Hearing Clerk
999 18th Street; Suite 200 (8RC)
Denver, Colorado 80202

within 30 calendar days (see 40 C.F. R. §22.15(a)) of receiving this complaint. The answer must clearly admit, deny or explain the factual allegations of the complaint, the grounds for any defense, the facts you may dispute, and your specific request for a public hearing. Please see section 22.15(b) of the Rules of Practice for a complete description of what must be in the answer. **FAILURE TO FILE AN ANSWER AND REQUEST FOR HEARING WITHIN 30 CALENDAR DAYS MAY WAIVE RESPONDENT'S RIGHT TO DISAGREE WITH THE ALLEGATIONS OR PROPOSED PENALTY, AND RESULT IN A DEFAULT JUDGMENT AND ASSESSMENT OF THE PENALTY PROPOSED IN THE COMPLAINT, OR UP TO THE MAXIMUM AUTHORIZED BY THE ACT.**

QUICK RESOLUTION

6. Respondent may resolve this proceeding at any time by paying the penalty amount proposed in the complaint. Such action to make payment need not contain any response to, or admission of, the allegations in the complaint. Such action to make payment constitutes a waiver of Respondent's right to contest the allegations and to appeal the final order. See section 22.18 of the Rules of Practice for a full explanation of the quick resolution process.

SETTLEMENT NEGOTIATIONS

7. EPA encourages discussing whether cases can be settled through informal settlement conferences. If you want to pursue the possibility of settling this matter, or have any other questions, contact Jim Eppers, Enforcement Attorney, at [1-800-227-8917; extension 6893 or 303-312-6893] or at the address identified in paragraph 26 herein. **Please note that calling Mr. Eppers or requesting a settlement conference does NOT delay the running of the 30 day period for filing an answer and requesting a hearing.**

GENERAL ALLEGATIONS

The following general allegations apply to all times relevant to this action, and to each count of this complaint:

8. Pursuant to section 1422 of the Act, 42 U.S.C. § 300h-1, and 40 C.F.R. part 147 subpart BB, section 147.1351, EPA administers the Underground Injection Control (UIC) program for Class II wells in Indian country within the State of Montana. The effective date of the program is June 25, 1984. The program requirements are located at 40 C.F.R. parts 124, 144, 146, 147, and 148.

- 1 9. Class II underground injection wells under the jurisdiction of the EPA are
2 authorized to operate either under an EPA-issued permit or under a rule. To be
3 eligible to operate under rule-authorization, a UIC well must be a Class II
4 enhanced oil recovery well and must have been such a well at the time the EPA
5 UIC program became effective. All other Class II wells must be authorized by an
6 EPA-issued permit. Salt water disposal wells are wells that inject water produced
7 to the surface from other oil or gas production wells.
8
- 9 10. The well subject to this action is a Class II salt water disposal well. This well is
10 authorized under a permit issued by the EPA. This well is operated by
11 Respondent and is located in Glacier County, Montana, within the exterior
12 boundary of the Blackfeet Indian Reservation. The specific well and its location
13 is:
14
15 WSW-1 well
16 EPA Permit #MT20808-04344
17 T32N, R6W, Section 11, NW/4, SW/4.
18
- 19 This well was originally permitted by EPA to K2 America Corporation with an
20 effective date of June 3, 1997. The well was originally a water supply well for a
21 waterflood, then was converted to a salt water disposal well after EPA issued the
22 permit and exempted the injection zone aquifer, within a radius of ½ mile around
23 the wellbore, from the definition of an underground source of drinking water.
24
- 25 11. The UIC permit at parts II (D)(1) through (4) and the regulations at 40 C.F.R.
26 §146.23(c) require that Respondent must annually by February 15 submit a report
27 of the previous year's monitored and recorded information. At a minimum, this
28 report must contain recorded observations of injection pressure, annulus pressure,
29 flow rate, and cumulative injection volume, which report is known as an "annual
30 monitoring report." Each year since 1998, prior to this due date, EPA has sent a
31 courtesy reminder letter to Respondent reminding Respondent of its obligation to
32 timely submit its annual monitoring report.
33
- 34 12. For the 2001 reporting year, the annual monitoring report was due by February
35 15, 2002. EPA did not receive the annual monitoring report until May 15, 2002.
36 This is a violation. See Attachment A to this complaint where this violation is
37 summarized and labeled with the letter "A."
38
- 39 13. The UIC permit at parts II (D)(1) through (4) and the regulations at 40 C.F.R.
40 §146.23(c) require that Respondent must annually by February 15 must submit
41 the analytical results of a fluid sample collected in the previous reporting year
42 which is representative of the injected fluid and analyzed, at least, for pH, specific
43 conductivity, specific gravity and total dissolved solids, which report is known as
44 an "annual fluid analysis." Each year since 2004, EPA has included in its
45 courtesy reminder letter language reminding Respondent of its obligation to
46 submit an annual fluid analysis.

- 1
2 14. For the 2001, 2004 and 2005 reporting years, the annual fluid analysis was
3 required to be submitted by February 15 of the year following each reporting year.
4 EPA never received the 2001 fluid analysis and did not receive the complete 2004
5 and 2005 fluid analyses until March 2, 2005, and March 28, 2006, respectively.
6 These are violations. See Attachment A to this amended complaint where this
7 violation is summarized and labeled with the letter "B."
8
9 15. The UIC permit at part II(D)(4) and the regulations at 40 C.F.R.
10 §§144.52(a)(6)(ii) and 146.23(b)(2) require that Respondent must observe the
11 well's injection pressure, annulus pressure, and flow rate, even during times when
12 the well is not being used for injection.
13
14 16. During an inspection on September 22, 2003, EPA representatives were told that
15 no one then had been inspecting the well at all, owing to the fact that the pump
16 house had been destroyed by a fire. This is a violation. During this inspection,
17 EPA representatives verbally reminded Respondent to monitor the well as if it
18 were active, and EPA sent a letter to Respondent dated October 9, 2003, stating
19 this same requirement. On October 22, 2003, Respondent confirmed it had begun
20 to regularly monitor the well. See Attachment A to this amended complaint
21 where this violation is summarized and labeled with the letter "C."
22
23 17. Respondent is a Montana company incorporated in the State of Montana and is
24 authorized to do business in the State of Montana.
25
26 18. Respondent is a "person" within the meaning of section 1401(12) of the Act,
27 42 U.S.C. § 300f(12).
28
29 19. The well which is the subject of this complaint penetrates known or possible
30 underground sources of drinking water (USDWs) including, but not limited to,
31 groundwater in surficial alluvial and glacial deposits, the Two Medicine
32 Formation, the Virgelle Formation, the Bow Islands Formation, the Sunburst
33 Formation and the Rierdon Formation. This sequence of geologic formations is
34 found from the surface to approximately 3,230 feet below surface.
35
36 20. A summary list of the violations alleged is included as Attachment A and is
37 incorporated into this complaint.
38

39 COUNT 1

- 40
41 21. Respondent is in violation the UIC permit at parts II (D)(1) through (4) and the
42 regulations at 40 C.F.R. §146.23(c) by failing to timely report monitored and
43 recorded observations of injection pressure, annulus pressure, flow rate, and
44 cumulative injection volume for the well referenced in paragraph 10. The
45 duration of the Respondent's violation is shown in detail in Attachment A, with
46 each such violation labeled with the letter "A."

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COUNT 2

22. Respondent is in violation of the UIC permit at parts II (D)(1) through (4) and the regulations at 40 C.F.R. §146.23(c) by failing to timely submit analytical results of a fluid sample collected analyzed, at least, for pH, specific conductivity, specific gravity and total dissolved solids for the well referenced in paragraph 10. The duration of the Respondent's violation is shown in detail in Attachment A, with each such violation labeled with the letter "B."

COUNT 3

23. Respondent is in violation of the UIC permit at part II(D)(4) and the regulations at 40 C.F.R. §§144.52(a)(6)(ii) and 146.23(b)(2) by failing to observe the well's injection pressure, annulus pressure, and flow rate, even during times when the well is not being used for injection. The duration of the Respondent's violation is shown in detail in Attachment A, with each such violation labeled with the letter "C."

PROPOSED ORDER WITH ADMINISTRATIVE CIVIL PENALTY

24. The Act, as amended, authorizes the assessment of a civil penalty of up to \$32,500.00 per day, 42 U.S.C. § 300h-2(b). The Act requires EPA to take into account the following factors in assessing a civil penalty: the nature, circumstances, extent and gravity of the violations; any economic benefit or savings gained resulting from the violations; Respondent's history of such violations; Respondent's culpability for the violations; Respondent's good-faith efforts to comply with applicable requirements; the economic impact of the penalty on the Respondent; and other factors that justice may require. 42 U.S.C. § 300h-2(c)(4)(B).
25. In light of the statutory factors and the specific facts of this case, EPA calculates and proposes that **Respondent pay a total penalty of US\$4,650.00 (four thousand six hundred fifty U.S. dollars)** for the violations alleged above, as explained below:

Economic Benefit

For Counts 1, 2 and 3, Respondent enjoyed an economic benefit by not committing expenditures to be in compliance. For Counts 1, Respondent delayed the cost of reporting information for its well for three months. For Count 2, Respondent avoided the cost for the 2001 reporting year, and delayed the cost for the 2004 and 2005 reporting years for nearly two months. For Count 3, Respondent avoided the cost of monitoring the well for at least one month. The total economic benefit Respondent has enjoyed is estimated by EPA to be US\$250.00 (two hundred fifty U.S. dollars).

Nature, Circumstances, Extent, and Gravity of Violations

The UIC program is heavily reliant upon accurate and representative self-reporting. Since there are so many injection wells in the country, regulators depend on well operators to abide by their self-monitoring and self-reporting requirements. Given the use of the injected wastewater's density in calculating a maximum allowable injection pressure limit, a well may be injecting at a pressure, which although compliant with the injection pressure limit measured at the surface pressure monitoring gauge, may be causing fracturing in the receiving injection zone. It is for this reason that EPA needs to know the specific gravity of the injected wastewater. Furthermore, it confirms that the wastewater is, in fact, oil field brine, permissible for injection under the regulations and UIC permit conditions. Similarly, EPA is reliant upon accurate reports of an injection well's operational history, including the measured injection and annulus pressure, and rates and total volumes injected. There is, for instance, a cumulative volume limit condition in the permit for this well. Finally, without a physical inspection of an injection well, an operator can only surmise the conditions within that well. It is for this important reason that an operator continue to physically inspect the well at regular intervals, even if it is not in use.

Prior Compliance History

EPA Region 8 has taken a prior formal enforcement action against Respondent for violations of the UIC program regulations. A previous complaint was issued bearing Docket No. SDWA-8-99-0056 and was settled on April 3, 2002. In that case, Respondent paid a penalty of US\$7,500 and plugged 16 injection wells it had stopped using.

Good-Faith Efforts to Comply

In addition to sending annual courtesy reminder letters regarding its annual reporting requirements to Respondent each year since 1998, EPA also sent notices of violation after it discovered that Respondent had not timely and/or completely complied with its reporting obligations. In this case, EPA sent notices of violation dated October 9, 2003 for the lack of well site monitoring, April 8, 2005 regarding the late 2004 fluid analysis, and March 8, 2006 regarding incomplete 2005 fluid analysis. Respondent appears to have made some effort to comply with its requirements, but the effort is not consistent. Therefore, EPA considers that Respondent has not always made a good faith effort to comply.

Degree of Culpability

Respondent has had access to this well since the well was originally permitted in 1997. Respondent has all the monitoring data required to make the obligatory reports to EPA. EPA is not aware of any reason why Respondent failed to be

1 timely in making its reports and has no knowledge that anyone is interfering with
2 this control.

3
4 Ability to Pay

5
6 EPA did not reduce the proposed penalty due to this factor, but will consider any
7 new information Respondent may present regarding Respondent's ability to pay
8 the penalty proposed in this complaint.

9
10 Other Matters that Justice may Require

11
12 EPA has made no additional adjustments to the penalty due to this factor.

- 13
14 26. Respondent's payment of the penalty shall be made by money order or certified
15 check made payable to "Treasurer, United States of America" and mailed to the
16 following address:

17
18 EPA - Region 8
19 Regional Hearing Clerk
20 P.O. Box 360859
21 Pittsburgh, Pennsylvania 15251.

22
23 A copy of said check shall be mailed to the following address:

24
25 Jim Eppers (8ENF-L)
26 Enforcement Attorney
27 U.S. EPA - Region 8
28 999 18th Street, Suite 200
29 Denver, Colorado 80202-2466.

- 30
31 27. The provisions of this complaint shall apply to and be binding upon Respondent,
32 its officers, directors, agents, servants, employees, and successors or assigns.
33
34 28. As required by the Act, prior to the assessment of a civil penalty, EPA will
35 provide public notice of the proposed penalty, and reasonable opportunity for
36 people to comment on the matter, and present evidence in the event a hearing is
37 held. 42 U.S.C. § 300h-2(c)(3)(B).
38
39 29. The administrative law judge is not bound by EPA's penalty policy or the penalty
40 proposed by EPA, and may assess a penalty above the proposed amount, up to
41 US\$32,500.00, per day for each violation, as authorized in the statute, as
42 amended.
43
44 30. This complaint does not constitute a waiver, suspension, or modification of the
45 requirements of any applicable provision of the Act or the UIC regulations
46 implementing the Act, which remain in full force and effect. Issuance of this

1 complaint is not an election by the EPA to forego any civil or any criminal action
2 otherwise authorized under the Act.

3
4 Issued this 12/11 day of June, 2006.

5
6
7 Edue A. Sierra
8 for Carol Rushin
9 Assistant Regional Administrator
10 Office of Enforcement, Compliance,
11 and Environmental Justice
12 U.S. EPA, Region 8
13 999 18th Street, Suite 200
14 Denver, CO 80202-2466

CERTIFICATE OF SERVICE
Docket No. SDWA-08-2006-0044

I hereby certify that the original and a true copy of the Proposed Order and Penalty Complaint with Notice of Opportunity for Hearing bearing the above-referenced Docket number were hand-carried to the Regional Hearing Clerk, EPA Region 8, 999 18th Street, Denver, Colorado, and that a true copy of the same was sent via Certified Mail Return Receipt Requested mail to:

Don R. Lee, Registered Agent
K2 America Corp.
158 Main Street
P.O. Box 790
Shelby, Montana 59474

Dated: 6/14/2006

By: Judith McTernan
Judith McTernan

ATTACHMENT A

		K2 America Corp.			
Well Name	EPA ID No.	Type of Violation	Date Violation Began	Date Violation Ended	Violation duration in days
WSW-1	MT20808-04344	A. Fail to timely submit AMR (2001 yr)	2/15/2002	5/15/2002	89
WSW-1	MT20808-04344	B. Fail to timely submit fluid analysis (2001 yr)	2/15/2002	2/15/2003	365
WSW-1	MT20808-04344	B. Fail to timely submit fluid analysis (2004 yr)	2/15/2005	3/2/2005	15
WSW-1	MT20808-04344	B. Fail to timely submit fluid analysis (2005 yr)	2/15/2006	3/28/2006	41
WSW-1	MT20808-04344	C. Fail to monthly monitor well (not monitoring well at all)	9/22/2003	10/22/2003	30

1st Page Only

Friday
July 23, 1999

Federal Register

Part V

**Environmental
Protection Agency**

40 CFR Part 22

**Consolidated Rules of Practice Governing
the Administrative Assessment of Civil
Penalties, Issuance of Compliance or
Corrective Action Orders, and the
Revocation, Termination or Suspension of
Permits; Final Rule**



U. S. EPA Small Business Resources

If you own a small business, the United States Environmental Protection Agency (EPA) offers a variety of compliance assistance and tools to assist you in complying with federal and state environmental laws. These resources can help you understand your environmental obligations, improve compliance and find cost-effective ways to comply through the use of pollution prevention and other innovative technologies.

Hotlines, Helplines and Clearinghouses

EPA sponsors approximately 89 free hotlines and clearinghouses that provide convenient assistance regarding environmental requirements.

The National Environmental Compliance Assistance Clearinghouse provides quick access to compliance assistance tools, contacts, and planned activities from the U.S. EPA, states, and other compliance assistance providers: <http://www.epa.gov/clearinghouse>

Pollution Prevention Clearinghouse
<http://www.epa.gov/opptintr/library/ppicindex.htm>

EPA's Small Business Ombudsman Hotline can provide a list of all the hot lines and assist in determining the hotline best meeting your needs:
(800) 368-5888

Emergency Planning and Community Right-To-Know Act
(800) 424-9346

National Response Center (to report oil and hazardous substance spills)
(800) 424-8802

Toxics Substances and Asbestos Information
(202) 554-1404

Safe Drinking Water
(800) 426-4791

Stratospheric Ozone and Refrigerants Information
(800) 296-1996

Clean Air Technology Center
(919) 541-0800

Wetlands Helpline
(800) 832-7828

EPA Websites

EPA has several Internet sites that provide useful compliance assistance information and materials for small businesses. If you don't have access to the Internet at your business, many public libraries provide access to the Internet at minimal or no cost.

EPA's Home Page
<http://www.epa.gov>

Small Business Assistance Program
<http://www.epa.gov/ttn/sbap>

Office of Enforcement and Compliance Assurance
<http://www.epa.gov/compliance>

Compliance Assistance Home Page
<http://www.epa.gov/compliance/assistance>

Office of Regulatory Enforcement
<http://www.epa.gov/compliance/civil/index.html>

Office of Site Remediation Enforcement
<http://www.epa.gov/compliance/cleanup>

Innovative Programs for Environmental Performance
<http://www.epa.gov/partners>

Small Business Ombudsman
www.sba.gov/ombudsman

